

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

OCT 23 AM 12

October 20, 2000

Scats of Illinois, Department of Transportation,
Petitioner,

VS.

Norfolk Southern Corporation,
Respondent.

T98-0033

Petition for Interim Order to install onto the :
railroad's existing cantilever f a r side overhead :
traffic signal indicators for northbound traffic :
signal indicators for northbound traffic on IL 159 :
(DOT 724 592N) near the at-grade crossing of :
tracks located in the city of Belleville, St. :
Clair County, Illinois.

JO ALL PARTIES OF RECORD:

Dear Sir/Madam:

Enclosed please find a copy of the Order entered by the Commission in the
above entitled matter on October 18, 2000.

Very truly yours,

Kevin L. Sharpe 5

Kevin L. Sharpe
Director of Processing
and Information

ss

Rick Korte, Hearing Examiner
John Blair, Railroad Section Staff

527 East Capital Avenue, P.O. Box 19280, Springfield, Illinois 62794-9280, (TDD # (217) 782-7434)

T98-0033

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

State of Illinois, Department of Transportation
Petitioner,

VS.

Norfolk Southern Railway Company,
Respondent.

T98-0033

Petition for Interim Order to install onto the railroad's
existing cantilever far side overhead traffic signal indicators
for northbound traffic on IL159 (DOT 724 592N) near the
at-grade crossing of tracks located in the City of Belleville.
St. Clair County, IL

ORDER

By the Commission:

On April 3, 1998, the Illinois Department of Transportation ("Department") filed its Petition with the Illinois Commerce Commission ("Commission") naming therein the Norfolk Southern Railway Company ("Company") as a Respondent. The Petitioner requested an Interim Order of the Commission requiring the installation of traffic signals on the same cantilever as the railroad flashing light signals at the IL159 grade crossing (DOT 724 592N) located in the City of Belleville ("City"), St. Clair County, Illinois. This was the only issue presented in the Department's petition.

On April 29, 1998, notice of a June 2, 1998, Hearing date was served upon the Parties.

On May 22, 1998, a motion for continuance was filed by the Company. The case was continued until July 7, 1998.

On June 17, 1998, a motion for a second continuance was filed by the Company.

On June 29, 1998, a Hearing on the Company's motion for a second continuance was held by a duly authorized Hearing Examiner who took the matter under advisement.

798.0033

On June 30, 1998, the Hearing Examiner issued a denial of the Company's motion for a second continuance.

On July 7 and 8, 1998, pursuant to the rules of the Commission, the Department's Petition came on for hearing before a duly authorized Hearing Examiner at the Commission's Office in Springfield, Illinois. At the hearing the Department and Company were represented by counsel. A member of the Commission's Railroad Section ("Staff") entered an appearance as a witness. The Department presented oral and documentary evidence in support of its Petition and the Company presented oral and documentary evidence in opposition of the Petition. Staff testified in support of the Petition. The record was marked "Heard and Taken" on July 8, 1998.

On July 27, 1998, pursuant to the Commission's Rule 6 of Practice, 83 Ill. Adm. Code 200.820, a Hearing Examiner's Proposed Interim Order was served on the Parties.

On July 30, 1998, the Company filed a Request for Extension of Time to file a brief on exceptions to the Hearing Examiner's Proposed Interim Order.

On August 1, 1998, a Hearing Examiner's Ruling was issued granting the Company Request for Extension of Time for filing of exceptions and replies.

On August 17, 1998, the Department filed an exception to the Hearing Examiner's Proposed Interim Order which requested an eighteen (18) month time period be used in the Interim Order for the Department and Company to complete their required work.

On August 21, 1998, the Company filed its Motion for Oral Argument and statement in Support of the Motion and its Brief on Exceptions to the Hearing Examiner's Proposed Interim Order.

On August 27, 1998, the Department filed its reply to the Company's Motion for Oral Argument and statement in Support of that Motion and its reply to the Company's Brief on Exceptions.

The Hearing Examiner considered the Parties' exceptions and replies and recommended the Commission deny the Company's Motion for Oral Argument. The Hearing Examiner stated that the Company's positions in its Motion and Brief revisited the arguments previously made on the record before the Hearing Examiner.

T96-0033

On September 23, 1999, The Commission denied the Company's Motion for Oral Argument

On October 5, 1998, the Commission entered its Interim Order.

On November 20, 1998, the Company timely filed its Motion For Rehearing or Reconsideration. That Motion For Rehearing or Reconsideration was denied by the Commission on December 16, 1998.

On January 15, 1999, the Company filed its Petition for Judicial Review with the Circuit Court for the Seventh Judicial Circuit (Sangamon County, Illinois), docketed as 99-MR-16.

On April 19, 1999, the Circuit Court entered an Order staying the Commission's Interim Order of October 5, 1998, pending the Circuit Court's review of the Company's Petition For Review.

On September 2, 1999, the Circuit Court heard the oral arguments of counsel for the parties. Thereafter, prior to entry of the Circuit Court's Order, the parties entered into further discussion and negotiations in an effort to resolve outstanding issues.

On August 17, 2000, the Circuit Court entered an agreed Order remanding this case to the Commission in accordance with and by agreement of the parties.

The Commission, having given due consideration to the entire record herein, finds that

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) the recitals of fact as set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (3) that within the City a public highway known as IL159 crosses at-grade the mainline track of the Company; IL159 extends in a general north-south direction; the IL159 grade crossing is identified as DOT 724 592N; immediately south of the crossing IL159 intersects with a public highway known as Douglas Avenue; Douglas Avenue extends in a general east-west direction; the intersection of IL159 and Douglas Avenue is equipped with highway traffic signals; IL159 and the highway traffic signals are both under

T68-0033

the jurisdiction of the Department; Douglas Avenue is under the jurisdiction of the City;

- (4) the IL159 grade crossing is equipped with cantilevered automatic flashing light signals and gates; the Company is responsible for maintenance of the railroad warning devices; the operation of the railroad warning devices are interconnected with the operation of the aforesaid highway traffic signals; the highway nil grade crossing warning system is currently designed to provide for a minimum of 20 seconds simultaneous preemption time for the normal operation of through trains at the subject crossing; this design and the minimum warning time are consistent with the results of the Departments engineering study conducted at this location; a chart of the proposed railroad preemption sequence is marked as Exhibit B, and attached hereto;
- (5) the Department proposes to replace the two existing far side overhead traffic signals for northbound traffic on IL159, which are mounted on a separate cantilever approximately four feet in front of an existing railroad cantilever, with two overhead traffic signals mounted on the same cantilever as the railroad flashing lights; in addition the Department proposes that one set of railroad flashing lights be retained on the cantilever arm and two sets of railroad flashing lights be retained on the supporting post of the cantilever;
- (6) The Department proposes to program the traffic signals at the intersection of IL 159 and Douglas Avenue to enter the yellow clearance interval of the railroad preemption sequence of operation after the minimum 1 second delay, if the traffic signals for IL159 have been in the green phase for less than 1 second at the time the railroad flashing light signals are activated, and/or the 1 second programmed delay, which is utilized to verify the signal received from the railroad equipment. The yellow indication is the clearance interval that is required by the MUTCD before a movement can be terminated with a red indication. The Department further proposes that the yellow clearance interval at this location be programmed in the traffic signal controller to be four (4) seconds. The Commission finds that these sequencing and signalization modifications are in the interest of public safety and convenience..
- (7) highway traffic signals and railroad flashing lights provide different traffic control indications to motorists: highway traffic signals indicate a motorist's right-of-way through an intersection and railroad flashing lights indicate

T98-0033

when a motorist should yield for an approaching train at a grade crossing: both types of traffic control devices are required at the subject location due to the close proximity of the IL 159 and Douglas Avenue intersection to the Company's grade crossing; the highway traffic signals and railroad flashing lights have isolated power sources;

- (8) the view of the existing railroad flashing light signals directed at motorists westbound on Douglas Avenue is obstructed by the existing highway traffic signal cantilever; in addition, visual clutter caused by the existing highway traffic signal cantilever located in front of the railroad cantilever exists on the south side of the IL 159 grade crossing;
- (9) the aforesaid sight obstruction for motorists westbound on Douglas Avenue and visual clutter caused by the existing highway and railroad cantilevers located within close proximity of each other will be eliminated if the two far side overhead traffic signals and the railroad flashing lights, for motorists northbound on IL 159, are installed on the same cantilever;
- (10) the Department agrees to pay 100% of the cost to replace the existing railroad cantilever located on the south side of the IL 159 grade crossing with a new cantilever that will accommodate the installation of two traffic signal heads and one set of railroad flashing lights on the same cantilever arm: the Department agrees to have the two traffic signal heads maintained from a bucket truck; the Department will prohibit its employees or contractor(s) from climbing onto the cantilevered structure as currently done by the Company's employees;
- (11) the Department agrees to contract with a private company or companies to perform the installation, maintenance and repair work for the traffic signals and traffic signal circuitry on the new railroad cantilever structure;
- (12) The Department agrees to require its contractor(s) and subcontractors performing the work described in this Order to execute and deliver to Company prior to entering onto Company's property a Right of Entry Agreement in the form as that attached to and made a part of this Order as Exhibit A;
- (13) The Department and Company have executed a written agreement, dated April 14, 1998, which provides for, inter alia, improvements to the railroad warning devices, to the IL 159 at-grade crossing surface and to the traffic control devices, which are all part of an overall highway widening and

T98-0033

improvement project. This agreement further provides for a division of work and expenses for the proposed improvements;

- (14) the Commission finds the improvement requested in this petition is part of an overall highway widening and improvement project planned by the Department in the interest of public safety and convenience and should be approved;
- (15) Federal Railroad Administration Rule 49 CFR Part 234.225 provides that a highway-rail grade crossing warning system shall be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time for the normal operation of through trains before the at-grade crossing is occupied by rail traffic;
- (16) The Commission's 91 IL Adm. Code 1635.350 provides that automatic flashing light signals shall be arranged to indicate the approach of trains on all main and auxiliary tracks included between the signals where the speed of trains approaching the at-grade crossing exceeds 5 miles per hour, for not less than 20 seconds before the arrival at the at-grade crossing of the fastest train operated over the track;
- (17) the Commission finds that it is in the interest of public safety that the current railroad preemption sequence be retained at the subject IL 159 (DOW724 592N) at-grade crossing.

IT IS THEREFORE ORDERED by the Commission that the Company shall replace the existing railroad cantilever located on the south side of the IL 159 grade crossing and the Company shall install a new cantilever that will accommodate the Department's highway widening project; the cantilever shall be designed to allow for the installation of two traffic signal heads on the cantilever arm and shall be equipped with one set of railroad flashing lights on the cantilever arm and one set of railroad flashing lights on the supporting post for traffic on IL 159 and one set of railroad flashing lights on the supporting post for westbound traffic on Douglas Avenue; and shall be designed to allow for the installation of crossbuck signs for westbound motorists on Douglas Avenue and for northbound motorists on IL 169; and shall be designed to allow for the installation of traffic control signals for westbound motorists on IL 169.

IT IS FURTHER ORDERED that the Department or the Department's contractor shall install two far side overhead traffic signals, as proposed by the Department, on the new railroad cantilever herein required and shall remove the existing highway traffic signal cantilever at said location.

T98-0033

if IS FURTHER ORDERED that the Department or the Department's contractor shall install and thereafter maintain all of the highway traffic signals and circuitry herein required by this Order; and the Company shall install and thereafter maintain all of the railroad signals and circuitry herein required by this Order.

IT IS FURTHER ORDERED that the new cantilever is and will remain the property of the Company. The Department shall pay 100% of the cost of this new cantilever including all costs associated with its design and installation, including any necessary flagging work. In the event this new cantilever requires replacement for whatever reason, the cost for the replacement and installation of that cantilever will be apportioned as follows: ~~50%~~ 60/40 - the Department; 50% - the Company.

IT IS FURTHER ORDERED by the Commission that the subject highway-rail grade crossing warning system shall be designed to provide for a minimum of 20 second simultaneous preemption time for the normal operation of through trains at the aforesaid IL 158 (DOT 724 592N) at-grade crossing, and shall thereafter be maintained by me Company.

IT IS FURTHER ORDERED that the Company shall not take any action which would result in a reduction of the minimum simultaneous preemption time herein required for the normal operation of through trains at the aforesaid IL 159 (DOT 724 592N) at-grade crossing without approval of the Commission.

IT IS FURTHER ORDERED that the Company shall comply with applicable Federal Railroad Administration ("FRA") regulations and its operating rules concerning the activation of the warning devices for low speed switching movements or train operations that require stopping short of the subject IL 159 (DOT 724 592N) at-grade crossing. Compliance with such FRA regulations and Norfolk Southern operating rules for such train movements shall be deemed to be in compliance with this Order.

IT IS FURTHER ORDERED that the Company shall post a readily visible notice inside their warning system cabinet at the aforesaid IL 159 (DOT 724 592N) at-grade crossing notifying their personnel not to take any action which would result in a reduction of the simultaneous minimum railroad preemption time herein required without the approval of the Commission. An actual size copy of the notices shall be submitted to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the proposed railroad preemption sequences provided in Exhibit B are hereby approved for the highway traffic control devices at the aforesaid highway intersection of IL 159 and Douglas Avenue.

798-0033

IT IS FURTHER ORDERED that the Department shall post a readily visible notice inside their traffic signal cabinets notifying their personnel not to alter the railroad preemption sequences for the traffic signals interconnected with the railroad warning devices at the aforesaid IL 150 (DOT 724 592N) at-grade crossing in a manner which would reduce the amount of time vehicles encroaching the track zone would have to clear the tracks without the approval of the Commission. An actual size copy of the notices shall be submitted to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the Department and Company shall each perform their work herein required within eighteen (18) months from the date of this Order.

IT IS FURTHER ORDERED that the Company, in consultation with the Department, shall design the railroad cantilever herein required to meet the specifications, requirements and needs of the Company, Department and the Commission.

IT IS FURTHER ORDERED that the Department's contractor shall be responsible for all traffic signal installation, maintenance, repair and replacement and that the Company shall not be liable for any damages to property or for bodily injury resulting from any traffic signal failure or malfunction.

IT IS FURTHER ORDERED that the Company shall within ninety (90) days from the date of this Order file a Form 8 of 92 Ill. Adm. Code 1535 with the Commission showing details of the cantilever installation herein required, which includes the Department's traffic signal mounting detail and shall receive approval by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that the Department or the Department's contractor shall notify the Company at least 7 days prior to commencing the traffic signal installation work herein required.

IT IS FURTHER ORDERED that the Department or the Department's contractor shall notify the Company prior to performing maintenance work to the traffic signals herein required.

IT IS FURTHER ORDERED that the Department and Company shall each within six (6) months from the date of this Order furnish to the Director of Processing, Transportation Division of the Commission a written report stating the progress each has made toward the completion of their work herein required.

T28-0033

IT IS FURTHER ORDERED that the Department and Company shall each notify the Director of Processing, Transportation Division of the Commission within five (5) days of completion of their work herein required.

IT IS FURTHER ORDERED that subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 18th day of October, 2000.

EXAMINER	<i>[Signature]</i>
SECTION CHIEF	<i>[Signature]</i>
Supervisor of Orders	

Richard P. Mathis

Chairman

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2000, by and between the Norfolk Southern Railway Company ("NS"), and a(n) _____ corporation, ("Indemnitor"). NS and Indemnitor are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties".

PRELIMINARY STATEMENT

Indemnitor desires to enter upon that portion of NS's right-of-way property located at ~~Douglas Avenue and Illinois Route 150 in Belleville, Illinois~~ depicted in Exhibit "A" attached to and made a part of this Agreement ("Premises") for the purpose of installing, maintaining and/or repairing traffic signals on the NS cantilever located on the Premises ("Permitted Activities").

NOW, THEREFORE, for and in consideration of the above stated recitals which are by this reference hereby incorporated into this Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties, NS and Indemnitor agree as follows,

1. NS hereby agrees to permit Indemnitor to enter upon the Premises commencing on the effective date of this agreement, to conduct the Permitted Activities and for no other purpose whatsoever subject to the terms and conditions set forth in this Agreement.
2. Indemnitor agrees to reimburse NS for all costs and expenses incurred in connection with the use of NS's personnel and equipment as a direct result of the Permitted Activities.
3. To the fullest extent permitted by law, Indemnitor agrees to indemnify and hold harmless the Company and its officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the work by the Indemnitor on or about the company's property; provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom, and further provided that the Indemnitor shall not be obligated to indemnify and hold harmless the Company from

T98-0033

EXHIBIT A

liability for injury or death or damages proximately caused by the negligence of any officers, employees or agents of the Company. The indemnification and held harmless provisions set forth in this agreement shall not be construed as an indemnification or hold harmless against and from the negligence of the Company with respect to any construction work performed by the Company's contractor or those performing on behalf of or with the authority of the Company's contractor to the extent that such is in violation of the Illinois Construction Contract Indemnification for Negligence Act 740 ILCS 35/0.01 et seq.

4. Prior to entering upon the Premises or commencing the Permitted Activities, Indemnitor agrees to furnish insurance to NS in form and in such amounts as set forth in Sections 107.11 and 107.27 of the Illinois Department of Transportation's Standard Specifications for Road and Bridge Construction, adopted January 1, 1997 ("IDOT Regulations"), and shall deliver to NS's Risk Management Department certificates of insurance or such other documentation acceptable to NS's Risk Management Department evidencing the acquisition of the required insurance and showing NS as additional insureds.

5. Indemnitor agrees to and shall comply with the requirements of Sections 106.02, 105.07, 107.01, 107.04, 107.12, 107.20, 107.28 and 107.31 of the IDOT Regulations during the course of Indemnitor's performance of the Permitted Activities on the Premises.

6. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's employees, agents, contractor's or subcontractors are physically present and conducting activities permitted under this Agreement.

7. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to NS, its successors and assigns.

8. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns NS and Indemnitor. This Agreement shall be governed by the laws of the State of Illinois. This Agreement together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be and remain Valid and enforceable to the fullest extent permitted by

law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement.

9. All notices demands, elections, and other instruments required or permitted
 • a be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid at the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

(a) Notices to NS shall be sent to: Gary W.

Woods

Vice President, Norfolk Southern Railway Co.

Street, S.W.

Atlanta, Georgia 30503

404-520-1700

99 Spring

(phone #)

(b) Notices to Indemnitor shall be sent to:

(phone #)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the day and year first written above.

NORFOLK SOUTHERN
 RAILWAY
 Indemnitor
 COMPANY

Union Pacific
 Railroad Company
 Indemnitor

T98-0633

EXHIBIT A

By: _____

By:

Its: _____

lb:

ATTEST:

AI-EST:

By: _____

B y :

Its: _____

Its:

EXHIBIT f!

IL 169 @ Douglas Street

AMENDED **PROPOSED** MINIMUM PREEMPTION TIME

	TIME NEEDED
Delay	1
Minimum Green (sec)	1
Yellow Interval (sec)	3.5
All Red Interval (sec)	2.0
Maximum Time Prior to Track Clear Phase	7.5
Track Clearance (sec) (not applicable)	0
Separation Time	9.0
Min RR Warning Time Required (total seconds)	20.0 sec
~ - FRA requirements mandate a Minimum Preemption Time of no less than 20 seconds.	



Illinois Department of Transportation

Telefax Cover Letter

Data: 4/16/01

To: <u>Mach H. Shumate, Jr.</u>	Bureau/District: <u>N/A</u>
Phone Number: <u>312-853-8455</u>	Company: <u>Union Pacific Railroad Co.</u>
Room Number: _____	Telefax No.: <u>312-853-8465</u>
From: <u>Yopesh Gautam, P.E.</u>	Bureau/District: <u>Central Bureau of Operations (Traffic)</u>
Telephone Number: <u>(217)782-3452</u>	Telefax No.: <u>(217) 782-7990</u>
Room Number: <u>009, Hanley Bldg., Springfield</u>	E-mail: <u>gautamyp@nt.dot.state.il.us</u>

Number of Pages Including This Cover Sheet: 16

Subject: US 14 at E. Hillside Ave/ Eastern Ave, Railroad-traffic signal interconnect

Comments: Dear Mr. Shumate:

Pursuant to your conversation with Ken Wood, accompanying this cover sheet is the ICC's Order for IL 159 @ Douglas Ave.

Yogesh Gautam

It there ars any problems upon receipt of this transmission, please call the sender Immediately.

Originals to be returned: Yes ☐ No ☐

Confirmation copy needed: Yes ☐ No ☐

Other instructions or requests: CC: Ken Wood

Note to Sender:

Remove any staples
Do not use colored pencil or other light colored pens
Documents must be single side copy
Convert two sided originals to single side before transmitting

AFS2167 (Rev. 1/93)